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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED ~~YES~~/NO
DATE: 10/11/25
SIGNATURE

Case No: 27833/2016

In the matter between:

M B MALEBANE

Applicant

and

ROAD ACCIDENT FUND

Respondent

Case No: 92057/2019

In the matter between:

MEYER, ANNAMARIE

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

Case No: 42813/2019

In the matter between:

HIRENA ALITA NDLOVU

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

Case No: 95361/2016

In the matter between:

I[...] T[...] obo A[...] T[...]

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

Case No: 101077/2023

In the matter between:

JOHANNA VIOLET PATEL

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

Case No: 4714/2021

In the matter between:

ZANOVIA JANIS MEAS

Applicant

and

THE ROAD ACCIDENT FUND

Respondent

(This judgement was handed down electronically by circulation to the parties and/or the parties' representatives by email and by being uploaded onto the online file. The date and time for hand down is deemed to be 10h00 on 11 November 2025.)

JUDGEMENT

FARRELL, AJ:

- [1] Of the approximately 200 applications that served before me in the Special Interlocutory Court during the week of 01 September 2025, a significant number of them were what I shall call Delinquency Applications contemplated in and authorized by paragraph 4.9 of the Revised Mediation Protocol Applicable in the Gauteng Division of the High Court.¹ The majority (if not all) of the Delinquency Applications were predicated on a respondent's failure to have replied at all to a applicant's Amplified Rule 41A Notice.² What struck me, however, is that most of the latter notices were perfunctory, were substantially similar, lacked the substantive particulars required by paragraph 4.6.2 of the Revised Mediation Protocol and were neither case sensitive nor structured to meaningfully initiate court-annexed mediation as is contemplated by the Revised Mediation Protocol. My increasing impression was that Delinquency Applications are being reduced to little more than a tactical shortcut to the default judgement roll.
- [2] In the result, I invited argument in appropriate cases on whether a applicant may invoke the delinquent-party machinery for which paragraph 4.9 of the Revised Mediation Protocol makes provision in circumstances where the foundational Amplified Rule 41A Notice itself lacks compliance with the substantive requirements of paragraph 4.6.2 of the Revised Mediation Protocol. After all, as a matter of principle and

¹ Hereinafter "the Revised Mediation Protocol".

² I refer here to the Amplified Rule 41A Notices for which paragraph 4.6 of the Revised Mediation Protocol makes provision.

authority, a defective initiating notice ought not to trigger the delinquent party regime in the Revised Mediation Protocol.

- [3] The Revised Mediation Protocol was introduced on 22 April 2025 by way of the Revised Directive Introducing Mandatory Mediation in the Gauteng Division.³ The Mediation Directive was adopted to address an acute civil trial backlog. The policy is to divert suitable cases out of the congested trial roll and to restore timely access to justice. Uniform Rule 41A is the foundational rule to the Revised Mediation Protocol. However, the Revised mediation Protocol supplements the rule by creating a structured, court-annexed system aimed at relieving trial congestion.
- [4] The Revised Mediation Protocol prescribes, *inter alia*, the process and content for both an Initial Rule 41A Notice, as well as an Amplified Rule 41A Notice. Both notices, to the extent possible and applicable, ought to stipulate the matters for which paragraph 4.6.2 of the Revised Mediation Protocol makes provision.
- [5] The Revised Mediation Protocol, in addition, creates a delinquent party regime in paragraph 4.9. That paragraph provides for a compulsion order against a defined “delinquent party” and permits access to the default judgement court in the event of persistent delinquency. To my mind, the textual architecture of the delinquent party regime presupposes that only a compliant initiating Rule 41A or Amplified Rule 41A notice can commence the countdown to delinquency. Additionally,

³ Hereinafter “the Mediation Directive”.

the broad remit of paragraph 4.9.1 of the Revised Mediation Protocol⁴ suggests that the sanctions for which paragraphs 4.9.2 and 4.9.3 of the Revised Mediation Protocol make provision should not be licensed on the back of a notice that itself does not comply with paragraph 4.6.2. The policy of the Mediation Directive is not served by weaponizing defective notices to force an opponent into default judgement court. It is rather served by good faith compliance with its terms.

[6] Paragraph 4.6.2 of the Revised Mediation Protocol outlines eight matters which ought to be traversed in a Rule 41A or an Amplified Rule 41A Notice. Those matters have likely been included in paragraph 4.6.2 of the Revised Mediation Protocol to ensure early and meaningful engagement between the parties, to provide the Court with sufficient reassurance about how the mediation will be managed, to facilitate case management, to promote focused mediation, to build discipline into the mediation process, to front-load the mediation process, to align the mediation with the nature and complexity of the case and, ultimately, to clear the court roll backlog. Paragraph 4.6.2 of the Revised Mediation Protocol is designed to ensure that mediation is fit for purpose and not merely a procedural hoop.

[7] The stipulations in paragraph 4.6.2 of the Revised Mediation Protocol include the following:

⁴ That paragraph does not limit delinquency to a failure to respond or to adequately respond to a Rule 41A or Amplified Rule 41A Notice. It also defines a delinquent party as one that fails to co-operate in the furtherance of the mediation process in accordance with the Mediation Directive and the Revised Mediation Protocol.

- [7.1] The name and relevant details of one or more of the proposed mediators.⁵ The purpose of this paragraph is to force early, meaningful engagement on the mediator. It is the precursor to either agreement or triggering the umpire pathway;
- [7.2] The common cause facts and the facts in dispute. The purpose of this paragraph is to facilitate a crisply bound dispute. Generic recitals and the replication of pleadings fails to attain this objective;
- [7.3] The disputed facts that are resolvable by admissions. The purpose of this paragraph is to identify low hanging fruit for narrowing the divide. It ought to be tailored to the case;
- [7.4] The expert evidence. The purposes of this paragraph are to facilitate a different mediation design, to avoid ambush, to assess complexity and to support the consideration of a single expert;
- [7.5] The procedural aspects and timelines that can be agreed. The purpose of this paragraph is to promote mediation as a case management tool. Agreements on procedure can also unlock settlement.
- [7.6] The response period. The purposes of the paragraph is to ensure disciplined exchanges, ensure alacrity in the mediation process and avoid drift;

[7.7] Any other material issues. The purpose of the paragraph is to provide a safety valve for case specific complexities.

[8] Together, the requirements of paragraph 4.6.2 are intended to transform mediation from a perfunctory gesture to a meaningful, early engagement mechanism consistent with the Mediation Directive. As such, they are not optional embellishments, but conditions precedent to the delinquent party regime. To view it differently subverts the policy of the Mediation Directive and morphs a cooperative mechanism to a tactical path to the default judgement court.

[9] As I have said, Rule 41A is the foundational rule to the Revised Mediation Protocol. According to paragraph 2.2.4 of that protocol, nothing in either the Mediation Directive or the Revised Mediation Protocol detracts from the right of parties to refer their dispute to mediation in accordance with the provisions of Rule 41A or otherwise by agreement between them, or from a Judge, or a case management Judge referred to in Rule 37A, to direct the parties to consider referral of the dispute to mediation as contemplated in Rule 41A(3). Put simply, voluntary mediation outside the remit of the Revised Mediation Protocol and in terms of Uniform Rule 41A remains unaltered and intact.

[10] Against this background, given my concerns about a possible abuse of Delinquent Applications, and in response to my invitation outlined in paragraph 2 above, the following salient points were argued before me:

- [10.1] first, a Directive that is not in line with the Uniform Rules of Court is invalid.⁶ Resultantly, any provision in the Revised Mediation Directive which is not consonant with Uniform Rule 41A is invalid. Paragraph 4.6.2 of the Revised Mediation Protocol imposes obligations on the parties that exceed the provisions of, and is thereby not consonant with, Rules 41A(2)(a) to (c). To that extent, paragraph 4.6.2 of the Revised Mediation Protocol is invalid;
- [10.2] second, all that Uniform Rules 41A(2)(a) to (c) require is a Notice compliant with Form 27 of the First Schedule to the Uniform Rules of Court. There are no further minimum requirements. A litigant is thus not obliged to comply with the stipulations in paragraph 4.6.2 of the Revised Mediation Protocol. Those stipulations are “mere guidelines”;
- [10.3] third, to require that the stipulations outlined in paragraph 4.6.2 of the Mediation protocol ought to be included in an Amplified Rule 41A Notice would be inconsistent with Uniform Rule 41A(2)(c) and, to that extent, the requirement is invalid. The mere service of and lack of response to a Form 27 Notice is thus sufficient to entitle a litigant to access the delinquency pathway in paragraph 4.9 of the Revised Mediation Protocol;
- [10.4] fourth, for a court to scrutinise an Amplified Rule 41A Notice would violate the privilege imperative in Uniform Rule

⁶ Reliance was placed on Malebana v Road Accident Fund 2025 JDR 0151 (GP) for this proposition.

41A(2)(d). In the result, judicial oversight of the Revised Mediation Protocol terminates once a litigant produces satisfactory evidence of their intention to mediate. It is impermissible for a Court to enquire beyond whether there is a Form 27 compliant notice, and, more specifically, to enquire into whether there has been compliance with paragraph 4.6.2 of the Revised Mediation Protocol; and

[10.5] fifth, this court need not exercise a supervisory role over the adequacy or otherwise of the Amplified Rule 41A notices that serve before it, as non-compliance falls for future determination in accordance with the enforcement mechanisms outlined in paragraph 4.10 of the Revised Mediation Protocol.

[11] I briefly deal with these submissions.

[12] It is correct that an Amplified Rule 41A Notice and a response to it are essentially notices in terms of sub-Rule 41A(2).

[13] It is well established that practice directives may not derogate from or override statutes, the common law or the Uniform Rules of Court. They may not override Rules based entitlements. They are merely procedural-administrative instruments that facilitate and streamline the daily functioning of court operations.⁷ However, courts may enforce properly issued, Rule consistent directives, but may not thereby deny Rule based rights or deny access to justice. It is thus correct that

⁷ National Director of Public Prosecution (Ex parte application) 2018 (2) SACR 176 (SCA) (31 May 2018) at [30] and [31]; Frank Mhlongo and Others v Tryphinah Mokoena N O and Others (723/20) [2022] ZASCA 78 (May 2022) at [12] and [13]; In re several matters on the urgent court roll 18 September 2012 [2012] 4 All SA 570 (GSJ) at [10] to [14]

paragraph 4.6.2 of the Revised Mediation Protocol must not derogate from or override Uniform Rule 41A for, if it does, it is invalid.

[14] The Revised Mediation Protocol requires that an Initial or Amplified Rule 41A Notice delivered pursuant to the Revised Mediation Protocol must comply with Uniform Rule 41A. This much is plain from paragraphs 4.2, 4.5.1, 4.5.2 and 4.7. As a general proposition, the Revised Mediation Protocol thus reinforces the need to comply with Uniform Rule 41A. In fact, paragraph 2.1.2.1 says as much. It does not seek to override or detract from Rule 41A. Paragraph 4.7 of the Revised Mediation Protocol makes it plain that the parties, with cogent reason, even retain the right to oppose referral to mediation.

[15] Paragraph 4.6.2 of the Revised Mediation Protocol requires the inclusion of 8 stipulations in the Rule 41A Notice. The stipulations are in addition to the information prescribed by Rule 41A. This much is plain from paragraphs 4.5.2 and 4.6.2. The stipulations neither detract from nor override the requirements contained in Uniform Rules 41A(2)(a) to (c). They merely constitute internal case management particulars that facilitate court-annexed mediation. In addition, and for the reasons which I have outlined in paragraphs 3,6,7 and 8 of this judgement, the inclusion of those stipulations is in the interests of justice. The reference to Form 27 of the First Schedule in Rule 41A(2)(c) merely imposes form and not substance. The substance required by that sub-Rule is expressly preserved by the Revised mediation Protocol. In the result, paragraph 4.6.2 of the Revised

Mediation Protocol merely facilitates Rule 41A attaining the laudable policy objective of the Mediation Directive. It is not invalid.

[16] Nothing contained in the Revised Mediation Protocol requires of a litigant to file a Rule 41A or an Amplified Rule 41A Notice with the Registrar, whether at all, or whether to access the delinquency pathway in Paragraph 4.9 of the Revised Mediation Protocol. The Special Interlocutory Court is capacitated to supervise compliance with the Revised Mediation Protocol without violating the privilege for which Rule 41A(2)(d) provides. The privilege in that Rule protects content, not procedural facts.

[17] Rule 41A(2)(d)⁸ stipulates that the notices in sub-Rule 41A(2) shall be without prejudice and shall not be filed with the Registrar. The purpose of this Rule is to protect *bona fide* settlement communications between the parties. The effect of the Rule is to confer privilege on those exchanges. The privilege is joint, at least where both parties have complied with the Rule. In the latter event, and generally speaking, the notices are inadmissible absent a recognised exception or mutual waiver.

[18] In the cases before me, the applicants attached to and relied upon the Amplified Rule 41A Notices in their Delinquency Applications. No claim to privilege was made before me. I was not asked to strike out the Amplified Rule 41A Notices. To my mind, this conduct evidences the

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Subject to the provisions of sub-Rule 41A(9)(b).

applicants' intention to waive privilege in respect of those notices and constitutes implied or imputed waiver of privilege by the applicants.⁹

[19] None of the respondents had filed responding notices in terms of Rule 41A(2)(b), read with the Revised Mediation Protocol at all. There were thus no notices in terms of Rule 41A(2)(b) to which the respondents could claim privilege. There were no simply no Rule 41A attempts at *bona fide* settlement by the respondents. In addition, the respondents neither objected to the applicants' unilateral disclosure of those notices, nor opposed the applications. To the extent that joint privilege may have arisen in relation to the applicants' Amplified Rule 41A Notices (which I doubt), the respondents conduct similarly evidences an intention to waive that privilege and constitutes implied or imputed waiver of privilege by the respondents.

[20] In the result, either:

[20.1] no joint privilege arose in respect of the applicants' notices in terms of the Amplified Rule 41A. The privilege was that of only the applicants. The applicants were entitled to and did unilaterally waive privilege to those notices; or

[20.2] any joint privilege that may have arisen, was mutually waived by the parties.

⁹ Naidoo v Marine & Trade Insurance Co Ltd 1978 (3) SA 666 (A); Contango Trading SA v Central Energy Fund SOC Ltd 2020 (3) SA (SCA) at [41] to [53], albeit in the context of legal privilege; KLD Residential CC v Empire earth Investments 17 (Pty) Ltd 2017 (6) SA 55 (SCA).

- [21] Where there is waiver of the privilege bestowed by Uniform Rule 41A(2)(d) the supervisory court may have recourse to the Amplified Rule 41A notice itself. Where there is no waiver of that privilege, a procedural compliance affidavit ought to suffice for purposes of seeking relief in terms of paragraph 4.9 of the Revised Mediation Protocol.¹⁰ Thus, no privilege needs to be pierced to supervise compliance.
- [22] Last, it is discordant to argue that the very court that is capacitated to invoke the enforcement mechanisms in paragraph 4.10.2 of the Revised Mediation Protocol, ought not to satisfy¹¹ itself that the Amplified Rule 41A Notice is compliant with paragraph 4.6.2 of that protocol.
- [23] The arguments before me are not the last word, however.
- [24] It is well established that where a court's machinery is invoked by a litigant for an improper purpose or to divert it from its true course, such conduct constitutes an abuse of process.¹² After all, process ought to vindicate rights not leverage procedural advantages. Using a facially non-compliant Rule 41A or Amplified Rule 41A Notice to expedite access to the default judgement court undermines the Mediation Directive and perverts the Revised Mediation Protocol. In those circumstances, relief ought not to be granted.

¹⁰ The affidavit can verify that each stipulation in paragraph 4.6.2 of the Revised Mediation Protocol was substantively addressed in the Rule 41A or Amplified Rule 41A Notice without disclosing or traversing the content of the notice.

¹¹ Whether based on a procedural compliance affidavit or, in appropriate cases, the notice itself where there has been waiver of privilege.

¹² Nathram v Road Accident Fund (46876/2020) [2024] ZAGPPHC 440 (26 April 2024); Beinash v Wixley 1997 (3) SA 721 (SCA) at 734F-G; Price Waterhouse Coopers Inc and Others v National Potato Co-operative Ltd [2015] 2 All SA 403 (SCA) (4 March 2015) at [50].

[25] I now briefly deal with the individual matters in which I reserved judgement.

Malebane:

[26] Privilege to the Amplified Rule 41A Notice was waived.¹³ The Amplified Rule 41A Notice is dated 25 April 2025.

[27] The Amplified Rule 41A Notice is manifestly perfunctory, largely rote and strikes one as boilerplate text. It, in addition, lacks the substantive particulars required by paragraph 4.6.2 of the Revised Mediation Protocol.

[28] The applicant has dedicated a substantial portion of the Amplified Rule 41A Notice to the issue of liability. He states in the notice that:

[28.1] the mediation may assist in resolving the issue of liability (including merits and causation) or identify issues in relation to, *inter alia*, liability in a relatively expeditious and inexpensive manner;

[28.2] he proposes that mediation on the question of liability be undertaken first. He additionally proposes and lists the documents “by virtue of the availability” of which the merits can be mediated.

¹³ CaseLines, pages 000(c)-29 to 000(c)-32.

[29] The issue of the defendant's liability was finally resolved by agreement and ordered by this court on 17 January 2020. This is more than 5 years prior to the Amplified Rule 41A Notice.

[30] To my mind, this in itself is rather compelling evidence that the applicant paid no heed to the facts of the case and made no concerted and *bona fide* effort to attain the policy objectives of the Mediation Directive or to comply with the spirit and letter of the mediation protocol when drafting the Amplified Rule 41A Notice. It justifies the reasonable inference that the Amplified Rule 41A Notice was a mere tick box exercise. This alone justifies a dismissal of the application.

[31] Although my conclusion in paragraph [31] is dispositive, the following bears noting. The applicant's Amplified Rule 41A Notice neither contemplates nor stipulates the common cause and disputed facts at all. In argument, it was contended that this is to be determined from the pleadings. This is not what the Revised Mediation Protocol requires. It does not list disputed facts that might reasonably be resolved by admissions at all. In argument it was contended that these issues are canvassed in the expert notices and are determined by the pleadings. This is not what the Revised Mediation Protocol requires. No procedural aspects and timelines applicable to the further conduct of the matter were meaningfully traversed. In argument it was contended that requiring of the defendant to respond to the Amplified Rule 41A Notice within 10 days satisfies this requirement, in addition to the following paragraph in the notice:

“Plaintiff believes that some, if not all issues may be resolved through mediation. An agreement defining the ambit of the mediation will also assist the process as determined by the rule.”

This paragraph defies meaningful interpretation within the context of paragraph 4.6.2.6 of the Revised Mediation Protocol.

[32] Given the policy objectives of the Mediation Directive and having regard to the purpose of paragraph 4.6.2 of the Mediation Protocol, I am not satisfied that the Amplified Rule 41A Notice in this case is anything more than a perfunctory gesture shorn of intent to either meet the true objectives of the Mediation Directive or to comply with the stipulations in paragraph 4.6.2 of the Mediation Protocol.

[33] The applicant’s Amplified Rule 41A Notice does not clear the threshold for relief offered by paragraph 4.9 of the Mediation Protocol.

[34] The application is, therefore, dismissed with costs.

[35] The applicant is granted leave to file a further Amplified Rule 41A Notice within 10 days from the date of this judgement.

[36] I am indebted to counsel for their instructive submissions.

Meyer:

[37] Privilege to the Amplified Rule 41A Notice was waived.¹⁴

¹⁴ CaseLines, pages I34 to I39.

[38] The Amplified Rule 41A Notice is confined to and conforms with Form 27 of the First Schedule read with Rule 41A(2)(a). Beyond listing three names (with no further particulars) it neither refers to nor attempts to comply with any the further stipulations in paragraph 4.6.2 of the Revised Mediation Protocol.

[39] In the result, the applicant's Amplified Rule 41A Notice is non-compliant with the Revised Mediation Protocol.

[40] The application is therefore dismissed with costs.

[41] The applicant is granted leave to file a further Amplified Rule 41A Notice within 10 days from the date of this judgement.

Ndlovu:

[42] Privilege to the Amplified Rule 41A Notice was waived.¹⁵

[43] The Amplified Rule 41A Notice is divided into two distinct parts. The first part conforms with Form 27 of the First Schedule read with Rule 41A(2)(a). The second part traverses the matters for which paragraph 4.6.2 of the Revised Mediation Protocol makes provision.

[44] I am satisfied that the applicant has applied her mind to the Amplified Rule 41A Notice and has substantially fulfilled the spirit of the Revised Mediation Protocol. However, no case is made out for a punitive costs order.

¹⁵ CaseLines, pages 04-3 to 04-7.

[45] In the result, I grant the following order:

[45.1] The respondent is ordered to reply to the applicant's Amplified Rule 41A Notice dated 05 June 2025 within 10 days from the date of this order.

[45.2] The respondent is ordered to pay the costs of this application on the party and party scale.

II[...]:

[46] Privilege to the Amplified Rule 41A Notice was waived.¹⁶

[47] The applicant's Amplified Rule 41A Notice conflates and does not readily distinguish between Rule 41A(2)(a) and paragraph 4.6.2 of the Revised Mediation Protocol.

[48] The applicant's Amplified Rule 41A Notice is a desultory and formulaic reproduction of the key phrases contained in paragraph 4.6.2 of the Revised Mediation Protocol which fail to obfuscate that, first, the applicant has not complied with its provisions and, second, the applicant has had no regard to the case itself in preparing the notice.

[49] The applicant states in the Amplified Rule 41A Notice that:

[49.1] there are no issues that might reasonably be resolved by admissions;

¹⁶ CaseLines, pages 0001-22 to 0001-257.

[49.2] expert evidence is essential, that the applicant has filed all their reports and that the respondent can consider the “loss of support of the matter” fully;

[49.3] they have industrial psychology expert evidence and an actuarial calculation;

[49.4] there is no need to appoint a single expert on a given issue;

[49.5] the respondent has not provided medico legal reports nor has the respondent given any indication of its intention to appoint experts;

[49.6] the respondent has not objected to the plaintiff’s expert reports.

The applicant then calls on the respondent to deliver Rule 36(2) and 36(9)(a) Notices within 14 days of the Amplified Rule 41A Notice if it intends appointing its own experts.

[50] Even the most cursory contrasting of applicant’s Amplified Rule 41A Notice with the facts of the matter illustrates that the notice was not spawned or composed with the intent of attaining meaningful engagement with the respondent through mediation.

[51] The case file reveals the following:

[51.1] the applicant’s claim is a loss of support claim;

- [51.2] the respondent has admitted that the deceased died as a result of the injuries sustained by him in the motor vehicle collision that occurred on 14 March 2015;¹⁷
- [51.3] the respondent has already obtained an expert opinion from an industrial psychologist. It was done in 2019 already;¹⁸
- [51.4] the respondent has already filed an actuarial calculation. It was done in 2021 already;¹⁹
- [51.5] the parties' industrial psychologists have already brought out a joint minute. It was done in 2019 already;²⁰
- [51.6] the disputes between the industrial psychologists concerning the deceased's career trajectory and associated earnings, and the salary scales to be used to calculate the prospective earnings, are limited;²¹
- [51.7] there are no disputes concerning the the basis for calculating the dependents' losses of support;²²
- [51.8] the respondent has admitted the expertise of the applicant's experts;²³

¹⁷ CaseLines, page 005-3

¹⁸ CaseLines, section 010 and page 005-5.

¹⁹ *Ibid.*

²⁰ CaseLines, section 011 and page 005-6.

²¹ *Ibid.*

²² *Ibid.*

²³ CaseLines, pages 005-04 and 005-05

[51.9] the respondent has essentially confirmed that it accepts the agreements reached between the experts;²⁴

[51.10] an actuarial report based upon the expert joint minutes has already been prepared;²⁵

[51.11] the respondent requested an unabridged birth certificate of the minor child at the pre-trial conference on 15 October 2019 to facilitate settlement of the claim.²⁶ It has still not been discovered.²⁷

[52] The facts of the case bear no resemblance to the content of the Amplified Rule 41A Notice. It seems fair to conclude that the applicant paid little or no heed to the facts of the case and had no *bona fide* intent to meet the policy objectives of the Mediation Directive or to comply with the spirit and letter of the mediation protocol when drafting the Amplified Rule 41A Notice. It again justifies the reasonable inference that the applicant's Amplified Rule 41A Notice was merely tokenistic.

[53] The application is, therefore, dismissed with costs.

[54] The applicant is granted leave to file a further Amplified Rule 41A Notice within 10 days from the date of this judgement.

Patel:

²⁴ *Ibid.*

²⁵ CaseLines, page 008-40 onwards.

²⁶ CaseLines, pages 005-2 and 005-7.

²⁷ CaseLines, section 007.

[55] Privilege to the Amplified Rule 41A Notice was waived.²⁸

[56] The materially different facts in this case (when contrasted, for example, with those in paragraph [51]), lead me to conclude that that the applicant has applied her mind to the Amplified Rule 41A Notice and has substantially fulfilled the spirit of the Revised Mediation Protocol. The relative brevity and the limited stipulations contained in the notice are commensurate with the narrow disputes, which are limited to the following:

[56.1] the provision to the applicant of an undertaking in terms of Section 17(4)(a) the Road Accident Fund Act, 1996 (Act 56 of 1996); and

[56.2] the quantification of general damages, the respondent having already accepted that the injury is “serious” in terms of Regulation 3 of the Road Accident Fund Regulations, 2008.

[57] I am not satisfied that a case has been made out for a punitive costs order against the respondent.

[58] In the result, I grant the following order:

[58.1] The respondent is ordered to reply to the applicant’s Amplified Rule 41A Notice dated 17 June 2025 within 10 days from the date of this order.

²⁸ CaseLines pages 001-35 to 001-40.

[58.2] The respondent is ordered to pay the costs of this application on the party and party scale.

Meas:

[59] Privilege to the Amplified Rule 41A Notice was waived.²⁹

[60] The facts in this case lead me to conclude that that despite the relatively brief stipulations in the applicant's Amplified Rule 41A Notice, the applicant has applied her mind to the Amplified Rule 41A Notice and has substantially fulfilled the spirit of the Revised Mediation Protocol. In reaching this conclusion, I have had regard to, *inter alia*, the fact that the respondent has essentially absented itself from the litigation. Beyond entering an appearance to defend the action in 2023, the respondent has not participated at all in the litigation. There is no plea, there are no pre-trial conference minutes and there are no joint expert minutes from which the applicant can extract the information outlined by the stipulations in paragraph 4.6.1 of the Revised Mediation Protocol; and

[61] I am not satisfied that a case has been made out for a punitive costs order against the respondent.

[62] In the result, I grant the following order:

²⁹ CaseLines pages 0001-25 to 0001-28.

[62.1] The respondent is ordered to reply to the applicant's Amplified Rule 41A Notice dated 11 June 2025 within 10 days from the date of this order.

[62.2] The respondent is ordered to pay the costs of this application on the party and party scale.

S T FARRELL
ACTING JUDGE OF THE HIGH COURT
PRETORIA

M B MALEBANE v ROAD ACCIDENT FUND

Case No: 27833/2016

Counsel on behalf of applicant:

R J de Beer SC
R G Bowles

Instructed by: Surita Marais Attorneys
Ref: S Marais/ME7548

MEYER, ANNAMARIE v ROAD ACCIDENT FUND

Case No: 92057/2019

Counsel on behalf of applicant:

L van Eeden

Instructed by: Gert Nel Incorporated
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HIRENA ALITA NDLOVU v ROAD ACCIDENT FUND

Case No: 42813/2019

Counsel on behalf of applicant:

L van Eeden

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Ref: C Roux/KB/GN12750

I[...] T[...] obo A[...] T[...] v RAF

Case No: 95361/2016

Counsel on behalf of applicant:
B Smith

Instructed by: Jacobus Attorneys
Ref: A B Jacobus/AT1266

JOHANNA VIOLET PATEL v RAF

Case No: 101077/2023

Counsel on behalf of applicant:
B Smith

Instructed by: Jacobus Attorneys
Ref: A B Jacobus/AP1559

ZANOVIA JANIS MEAS v RAF

Case No: 4714/2021

Counsel on behalf of applicant:
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Instructed by: Jacobus Attorneys
Ref: A B Jacobus/AM1450